

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #9	CCRB Case #: 201600229	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/06/2016 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 7/6/2017	EO SOL 7/6/2017	
Date/Time CV Reported Thu, 01/07/2016 6:39 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 01/07/2016 6:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Daniel Nicoletti	5379	942271	GVS DIV
3. POM Eduardo Ochoa	02850	917142	120 PCT
4. POM Ernan Vega	04893	948153	120 PCT
5. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Browne	00352	950113	120 PCT
2. POM Sean Dawson	01415	948856	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.SGT Daniel Nicoletti	Abuse: Sgt. Daniel Nicoletti searched § 87(2)(b) § 87(2)(b) FL in Staten Island.	§ 87(2)(b)
C.POM Eduardo Ochoa	Abuse: PO Eduardo Ochoa searched § 87(2)(b) § 87(2)(b) Floor, in Staten Island.	§ 87(2)(b)
D.POM Ernan Vega	Abuse: PO Ernan Vega searched § 87(2)(b) § 87(2)(b) Floor, in Staten Island.	§ 87(2)(b)
E.SGT Daniel Nicoletti	Abuse: Sgt. Daniel Nicoletti refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
F.POM Eduardo Ochoa	Abuse: PO Eduardo Ochoa refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
G.POM Ernan Vega	Abuse: PO Ernan Vega refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)
H. Officers	Abuse: Officers refused to provide their names and shield numbers to § 87(2)(b)	§ 87(2)(b)

### Case Summary

On January 6, 2016, at approximately 8:00 p.m., § 87(2)(b) returned to her residence located at § 87(2)(b) § 87(2)(b)<sup>st</sup> Floor, in Staten Island. § 87(2)(b) called her landlord, § 87(2)(b) § 87(2)(b) who told § 87(2)(b) that she was on her way to § 87(2)(b)'s residence.

After talking to § 87(2)(b) § 87(2)(b) heard a loud knock on the front door of her apartment. § 87(2)(b) then went to the front door to check what happened. While behind the closed front door, § 87(2)(b) asked, "Who is it?" § 87(2)(b) was informed that it was the police. An officer then asked § 87(2)(b) to open the door and explained to her that the officers arrived because they received a 911 call informing them about a burglary involving a firearm in her apartment. § 87(2)(b) refused to open her front door and replied that there was no burglary, there was no firearm, and that she did not call 911. § 87(2)(b) alleged that an officer asked § 87(2)(b) to open her door and to allow the officers to enter so they could conduct an investigation; otherwise, by refusing to let the officers inside of the apartment, § 87(2)(b) could be placed under arrest (**Allegation A**). § 87(2)(b) then opened the front door and told the officers that they required a warrant in order to come inside of her apartment.

§ 87(2)(b) alleged that after opening the front door, she then closed it on the officers without allowing any of them inside of her apartment. § 87(2)(b) then walked outside of her apartment through the back door in order to ask one of her neighbors if she could use their telephone. When § 87(2)(b) returned to her apartment, she saw an officer standing in her backyard. The officer, whom § 87(2)(b) refused to describe and the investigation was unable to identify, asked § 87(2)(b) if she called 911. § 87(2)(b) replied that her neighbor from the second floor, identified via investigation as § 87(2)(b) called the police. The officer told § 87(2)(b) that the officers needed to go inside of her apartment in order to check her basement. § 87(2)(b) then allowed the officers to come inside of her apartment through the back door. § 87(2)(b) alleged that after the officers, identified via investigation as PO Ernan Vega, PO Eduardo Ochoa, and Sgt. Daniel Nicoletti of the 120<sup>th</sup> Precinct, entered her apartment, they searched § 87(2)(b)'s bathroom, bedroom, kitchen and living room. (Sgt. Nicoletti was recently transferred to the Gun Violence Suppression Division.) § 87(2)(b) alleged that PO Ochoa, PO Vega, and Sgt. Nicoletti opened various closets throughout the apartment and used their flash lights to check inside of those closets (**Allegations B, C, and D**).

§ 87(2)(b) alleged that at some point during the incident, she asked all of the officers who were present at the location for their names and shield numbers, which they refused to provide to § 87(2)(b) upon her request (**Allegations E, F, G and H**).

After spending approximately two hours inside of § 87(2)(b)'s apartment, the officers left. § 87(2)(b) was not arrested during this incident, and she was not issued any summons. There is no video footage of this incident.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because the incident involved more than four officers.
- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- A Notice of Claim was not filed in regard to this incident (Board Review 4).

### **Civilian and Officer CCRB Histories**

- Sgt. Daniel Nicoletti has been a Member of Service for nine years, and has five previous CCRB allegations that were made against him, which were closed as unsubstantiated, exonerated, complainant uncooperative, and other misconduct.
- PO Eduardo Ochoa has been a Member of Service for 19 years, and has ten previous CCRB allegations that were made against him, which were closed as exonerated, unsubstantiated, complainant uncooperative, victim uncooperative, and unfounded.
- PO Ernan Vega has been a Member of Service for seven years, and has ten previous CCRB allegations that were made against him, which were closed as victim uncooperative, exonerated, unsubstantiated, and unfounded.
- § 87(2)(b)

### **Potential Issues**

- § 87(2)(b)
- § 87(2)(b) the tenant from the second floor who called 911, was uncooperative with the investigation.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- On January 6, 2016, at approximately 8:00 p.m., § 87(2)(b) returned to her residence located at § 87(2)(b) § 87(2)(b)<sup>st</sup> Floor, in Staten Island. § 87(2)(b) called her landlord, identified via investigation as § 87(2)(b) § 87(2)(b) who told § 87(2)(b) that she was on her way to § 87(2)(b)'s residence. § 87(2)(b) could not understand why § 87(2)(b) had to come to her residence in the evening. After talking to § 87(2)(b) § 87(2)(b) heard a loud knock on the front door of the house. When § 87(2)(b) § 87(2)(b) approached the front door, she asked, "Who is it?" § 87(2)(b) was informed that it was the police, and was then asked to open the door. § 87(2)(b) refused to open her front door and told the officers that they needed a warrant to enter her apartment. § 87(2)(b) saw that § 87(2)(b) opened the front door of the house and let approximately five to six officers inside of a small foyer area located right in front of § 87(2)(b)'s apartment. An officer then asked § 87(2)(b) to open her door and he informed her that the police arrived because the officers received a call about a burglary involving a firearm in her apartment. § 87(2)(b) once again refused to open her front door. An officer then told § 87(2)(b) that if she did not open her door and let the officers inside, she could be arrested. During her interview, § 87(2)(b) could not describe or identify the officer who threatened to arrest her; moreover, § 87(2)(b) refused to answer the undersigned's follow up questions regarding that officer's identification (Board Review 1).

PO Vega testified that on January 6, 2016, he and PO Ochoa received a radio call regarding a burglary at § 87(2)(b) in Staten Island. When PO Vega arrived at the location, he and PO Ochoa knocked on the front doors of the apartments located on

the first and on the second floors. The tenant from the second floor, identified as § 87(2)(b) opened the door and told the officers that the tenant from the first floor, identified as § 87(2)(b) told her that she was burglarized. PO Vega and PO Ochoa then knocked multiples times on the front door of § 87(2)(b)'s apartment. PO Vega and PO Ochoa informed § 87(2)(b) through the closed door that they were from the police and asked her to open the door. After § 87(2)(b) finally opened her front door, PO Vega informed § 87(2)(b) that the officers received a 911 call informing them about a burglary at her apartment. § 87(2)(b) replied that there was no burglary and she then slammed her front door on PO Vega and PO Ochoa. PO Vega also testified that he was then informed by § 87(2)(b) that § 87(2)(b) turned off the heat and electricity in her apartment, and PO Vega asked § 87(2)(b) to allow a mechanic, identified via the investigation as § 87(2)(b) to enter her basement in order to restore the heat and electricity in § 87(2)(b) apartment. § 87(2)(b) refused to let § 87(2)(b) inside of her basement; therefore, PO Vega then informed § 87(2)(b) that her turning off the electricity and heat in the second floor apartment constituted illegal eviction for what she could be issued a summons. PO Vega did not tell § 87(2)(b) at any point during the incident that she could be arrested for refusing to open her door; neither, PO Vega had heard if Sgt. Nicoletti or PO Ochoa threatened to arrest § 87(2)(b) at any point during the incident (Board Review 5).

PO Ochoa testified that on January 6, 2016, at approximately 8:30 p.m., he and PO Vega received a radio call informing them about a burglary at § 87(2)(b) in Staten Island. When PO Ochoa and PO Vega arrived at the location, they speak with the second floor tenant, § 87(2)(b) who told the officers that § 87(2)(b) had turned off her heat and electricity. Considering the fact that it was very cold outside, PO Ochoa decided that it was important to restore the heat and electricity in § 87(2)(b) apartment. PO Ochoa and PO Vega then went to § 87(2)(b)'s apartment and knocked on the front door. When § 87(2)(b) came to the front door, she told PO Ochoa through the closed door that she did not want to talk to the officers. PO Ochoa then asked § 87(2)(b) to open the door and told her that the officers arrived because they received a 911 call informing them about a burglary at her apartment. Moreover, PO Ochoa told § 87(2)(b) that additional reason the officers wanted her to open the door was because § 87(2)(b) did not have any heat and electricity in her apartment, and that they wanted § 87(2)(b) to restore those utilities. § 87(2)(b) replied that there was no burglary, and then refused to open her door and turned off the lights inside of her apartment. PO Ochoa did not tell § 87(2)(b) that she could be arrested for refusing to open her door to the officers. PO Ochoa did not hear at any point during the incident if PO Vega, Sgt. Nicoletti or the other officers, who arrived at the location later, told § 87(2)(b) that she could be arrested (Board Review 6).

Sgt. Nicoletti testified that on January 6, 2016, PO Ochoa and PO Vega called him over his cellphone and requested his assistance at § 87(2)(b) in Staten Island. When Sgt. Nicoletti arrived at the location, he knocked on the front door of the first floor apartment; however, no one responded. Sgt. Nicoletti then went to speak to the second floor tenants, § 87(2)(b) and her husband, who stated that they had small children and that § 87(2)(b) turned off the heat and electricity in their apartment. Sgt. Nicoletti

- then returned to § 87(2)(b)'s residence and knocked on her front door for approximately 15 minutes. § 87(2)(b) finally opened her door and yelled, "There is no burglary! Why you keep knocking on my door?" Sgt. Nicoletti then tried to explain to § 87(2)(b) that based on his experience even if people say that there is no burglary, [Sgt. Nicoletti] does not know what is going on behind the closed door, and [burglars] could be holding § 87(2)(b) at gun or at knife point. Sgt. Nicoletti also tried to explain to § 87(2)(b) that there was another issue with the § 87(2)(b) apartment where there was no heat and electricity. Sgt. Nicoletti did not tell § 87(2)(b) at any point during the incident that she could be arrested for refusing to open her door to the officers. After arriving at the location, Sgt. Nicoletti did not hear if PO Ochoa or PO Vega told § 87(2)(b) that she could be arrested for refusing to open her door to the officers (Board Review 7). The investigation could not determine which particular officer who acknowledged speaking with § 87(2)(b) threatened to arrest her during this incident; as such, **Allegation A** is pleaded against "an officer".
- According to the audio recording of a radio communication between the officers and an operator of the Central Command, the 120<sup>th</sup> Precinct Jersey Street Conditions Unit responded to the location along with Sgt. Nicoletti (Board Review 8). As per Roll Call, Sgt. Nicoletti was assigned as the Supervisor of the Jersey Street Conditions Unit (Board Review 9). Sgt. Nicoletti acknowledged entering § 87(2)(b)'s apartment and interacting with her. As such, **Allegations B** and **E** are pleaded against Sgt. Nicoletti.
  - Sgt. Nicoletti testified that PO Ochoa and PO Vega requested his assistance at § 87(2)(b) in Staten Island (Board Review 7). PO Ochoa acknowledged entering and searching § 87(2)(b)'s apartment and interacting with her on the day of the incident. As such, **Allegations C** and **F** are pleaded against PO Ochoa.
  - PO Ochoa testified that on the day of the incident, he was assigned to the Jersey Street Conditions Unit with PO Vega (Board Review 6). PO Vega acknowledged entering § 87(2)(b)'s apartment and interacting with her. As such, **Allegations D** and **G** are pleaded against PO Vega.
  - § 87(2)(b) stated that during the incident she asked all of the officers for their names and shield numbers. § 87(2)(b) refused to clarify which officers she asked, and when she asked them for their names and shield numbers. Sgt. Nicoletti, PO Ochoa, and PO Vega testified that at the end of the incident, § 87(2)(b) asked them for their names and shield numbers. The investigation could not determine which other officers § 87(2)(b) asked for their names and shield numbers besides Sgt. Nicoletti, PO Ochoa, and PO Vega. As such, **Allegation H** is also pleaded against "officers".

#### **Allegations not pleaded**

- **Abuse of Authority:** § 87(2)(b) stated that she initially refused to allow the officers to enter her apartment through the front door; however, she later stated that she allowed the officers to enter her apartment through the back door. Because § 87(2)(b) acknowledged allowing the officers to enter her apartment through her back door after initially refusing to allow them to enter through the front door, an entry allegation is not being pleaded.

**Allegation A—Abuse of Authority: An officer threatened to arrest § 87(2)(b)**

As discussed above, § 87(2)(b) did not provide a description of the officer who allegedly threatened to arrest her for refusing to open her door. Furthermore, § 87(2)(b) refused to answer follow up questions from the undersigned that significantly hindered the investigations ability to identify the officer who allegedly threatened to arrest § 87(2)(b) Sgt. Nicoletti, PO Ochoa, and PO Vega denied telling § 87(2)(b) that she could be arrested for refusing to open her door to the officers. Moreover, § 87(2)(b) refused to answer any follow up questions which could potentially help the investigation to identify that officer or to determine at what point the alleged threat of arrest was made. Without such information, the investigation could not determine which officer was subject of this allegation. § 87(2)(g)

**Allegation B—Abuse of Authority: Sgt. Daniel Nicoletti searched § 87(2)(b)**

**Floor, in Staten Island.**

**Allegation C—Abuse of Authority: PO Eduardo Ochoa searched § 87(2)(b)**

**Floor, in Staten Island.**

**Allegation D—Abuse of Authority: PO Ernan Vega searched § 87(2)(b)**

**Floor, in Staten Island.**

§ 87(2)(b) alleged that after she allowed the officers to enter her apartment through the back door, they searched her bathroom, bedroom, kitchen and living room. She alleged that the officers opened various closets and used their flash lights to check inside of those closets. During her interview, § 87(2)(b) could not specify which officers went inside of her apartment, nor did she clarify where those closets were located, and which officers opened which closets (Board Review 1).

Sgt. Nicoletti testified that after he entered § 87(2)(b)'s apartment, he was standing inside of the foyer area that was linked together with the kitchen. While talking to § 87(2)(b) Sgt. Nicoletti looked around the kitchen. Sgt. Nicoletti denied going inside of § 87(2)(b)'s bathroom, bedroom or living room; neither had he seen if PO Ochoa or PO Vega went inside of any other rooms of § 87(2)(b)'s apartment besides her basement (Board Review 7).

PO Ochoa testified that after Sgt. Nicoletti and PO Vega entered § 87(2)(b)'s apartment, he then went inside of the apartment as well and joined the rest of the officers. PO Ochoa, PO Vega, and Sgt. Nicoletti went inside of § 87(2)(b)'s bedroom, bathroom, kitchen, living room and the stairs of the basement to make sure that there were no burglars hiding inside of any of these rooms. PO Ochoa opened a closet in § 87(2)(b)'s bedroom to make sure that no one was hiding inside. PO Ochoa testified that a closet located in the living room was opened as well; however, he did not remember if it was PO Vega or Sgt. Nicoletti who opened that closet. PO Ochoa, PO Vega, and Sgt. Nicoletti then escorted § 87(2)(b) to the basement so he could restore the heat and electricity in § 87(2)(b)'s second floor apartment (Board Review 6).

PO Vega testified that after he entered § 87(2)(b)'s apartment, he, PO Ochoa, and § 87(2)(b) went right to the basement to restore the heat and electricity in § 87(2)(b)'s apartment. In order to get to the basement, PO Vega, PO Ochoa, and § 87(2)(b) walked through § 87(2)(b)'s kitchen and living room. Before PO Vega got to the basement, he opened a few doors because he did not know which door led to the basement. PO Vega did not go inside any

other rooms of § 87(2)(b)'s apartment; neither, had he opened any closets while inside of the apartment (Board Review 5).

Under the “emergency doctrine,” “[t]he police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for assistance for the protection of life or property.” *See People v. DePaula*, 179 A.D. 2d 424 (App. Div. 1<sup>st</sup> 1992) (Board Review 20). Moreover, *People v. Gallmon*, 19 N.Y. 2d 389, 394 (1967), specifically states that: “[p]erhaps it is of the greatest significance to this case that the police officer’s entry was pursuant to his general obligation to assist people in distress— a purpose often independent of considerations affecting the criminal law. Police are expected and often required to investigate the unquelled crying of babies, sounds and blows in what turn out to be matrimonial disputes, to assist in child deliveries, and to resolve the causes of unusual sounds suggesting harm to persons, animals and property. Their functions are just not confined to criminal law enforcement, a matter frequently of great concern to those seeking to make limited police resources more effective. In this context it has been suggested that an officer’s entry is based neither on consent nor license and that even the refusal of consent may be of no avail ( cf. *Meiers v. Koch Brewery*, 229 N.Y. 10, 12, 15; *Beedenbender v. Midtown Props.*, 4 A. D.2d 276, 281; 2 Alexander, Law of Arrest, §634)” (Board Review 10).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

**Allegation E— Abuse of Authority: Sgt. Daniel Nicoletti refused to provide his name and shield number to § 87(2)(b)**

**Allegation F— Abuse of Authority: PO Eduardo Ochoa refused to provide his name and shield number to § 87(2)(b)**

**Allegation G— Abuse of Authority: PO Ernan Vega refused to provide his name and shield number to § 87(2)(b)**

**Allegation H—Abuse of Authority: Officers refused to provide their names and shield numbers to § 87(2)(b)**

[REDACTED] alleged that at some point during the incident, she asked all of the officers present at the location for their names and shield numbers. When asked to clarify which officers she asked for their names and shield number, § 87(2)(b) refused to answer (Board Review 1).

Sgt. Nicoletti testified that at some point during the incident, § 87(2)(b) asked him for his name and shield number. Sgt. Nicoletti provided his name and shield number to § 87(2)(b) verbally. § 87(2)(b) then found a pen and wrote down his information (Board Review 7).

PO Ochoa testified that when he, Sgt. Nicoletti and PO Vega exited the basement and were leaving the apartment, § 87(2)(b) asked them for their names and shield numbers. PO Ochoa, PO Vega and Sgt. Nicoletti provided their names verbally to § 87(2)(b). PO Ochoa and PO Vega then left the apartment. PO Ochoa did not hear if § 87(2)(b) asked the other officers who were present at the scene for their names and shield numbers (Board Review 6).

PO Vega testified that when he, PO Ochoa and § 87(2)(b) exited the basement of § 87(2)(b)'s apartment, § 87(2)(b) asked them for their names and shield numbers. PO Vega pointed to his shield and then provided his name and shield number to § 87(2)(b) verbally. § 87(2)(b) had a notepad and a pen in front of her; however, PO Vega did not see if she wrote down his information. PO Vega heard § 87(2)(b) requested PO Ochoa and Sgt. Nicoletti for their names and shield numbers. Before PO Vega left § 87(2)(b)'s apartment, he heard Sgt. Nicoletti spell out his name to § 87(2)(b). PO Vega did not hear if PO Ochoa provided his name and shield number to § 87(2)(b). PO Vega did not hear if § 87(2)(b) asked any other officers for their names and shield numbers while he was at the scene (Board Review 5).

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b) PO Ochoa testified that there were a few other officers guarding the perimeter of § 87(2)(b)'s house; however, he could not provide their names. PO Vega and Sgt. Nicoletti also stated that other officers were present at the scene; however, they were unable to identify those officers as well.

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b).

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Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date